

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 1, 2004

IN RE:

**GENERIC DOCKET ADDRESSING
RURAL UNIVERSAL SERVICE**

)
)
)
)

**DOCKET NO.
00-00523**

**ORDER RECONSIDERING HEARING OFFICER'S INITIAL ORDER
ADDRESSING LEGAL ISSUE 2 AND AMENDING
THE HEARING OFFICER'S ORDER ISSUED MAY 6, 2004**

These matters came before Chairman Pat Miller, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this Docket at a regularly scheduled Authority Conference held on August 9, 2004 for consideration of two motions filed by BellSouth Telecommunications, Inc. ("BellSouth"). First, BellSouth filed a *Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of Pre-Hearing Officer Filed on November 8, 2000* ("First Reconsideration Motion") filed on July 25, 2002.¹ The First Reconsideration Motion was partially granted by a majority of the panel at the August 9, 2004 Conference, allowing the negotiations of the toll settlement agreements to occur outside of Docket No. 00-00523, as long as an interim compensation scheme exists. Second, BellSouth's *Motion for Reconsideration of Hearing Officer's Order Dated May 6, 2004* ("Second Reconsideration Motion") was filed May 17, 2004. The Second Reconsideration Motion was also considered and, after deliberations, a majority of the panel voted to modify the Hearing Officer's May 6, 2004 Order requiring

¹ This motion was filed as a substitute version of the original motion by the same title filed with the TRA on July 15, 2002.

BellSouth to pay 1.5 cents per minute for transit wireless traffic for the interim period of June 2003, the date BellSouth ceased such payments, through September 30, 2004.² Further, a majority of the voting panel³ decided that the 1.5 cent interim rate for wireless transit traffic would be subject to a true-up once the rate for wireless traffic is determined in Docket No. 03-00585.⁴

TRAVEL OF THE CASE

This docket was commenced on June 20, 2000 when the Directors of the Authority voted unanimously to establish a Rural Universal Service Docket and appoint a Hearing Officer for the purpose of preparing this matter for consideration by the Directors. Following an initial Status Conference, the Hearing Officer issued a Report and Recommendation on November 8, 2000 setting a schedule for filing briefs and testimony on the following legal issues established in this docket:

1. Does the TRA have jurisdiction over the toll settlement agreements between BellSouth and the Rural Local Exchange Carriers?
2. Should the withdrawal of toll settlement agreements between BellSouth and the Rural Local Exchange Carriers be considered in the Rural Universal Service Proceeding? If so, how should they be considered?
3. Is the state Universal Service statute, as enacted, intended to apply to rate of return regulated rural companies, as such companies are defined under state law?

² Director Jones did not vote with the majority

³ Director Jones did not vote with the majority

⁴ *Petition for Arbitration of CellCo Partnership D/B/A Verizon Wireless, Petition for Arbitration of BellSouth Mobility LLC, BellSouth Personal Communications, LLC, Chattanooga MSA Limited Partnership, Collectively B/B/A Cingular Wireless, Petition for Arbitration of AT&T Wireless PCS, LLC D/B/A AT&T Wireless, Petition for Arbitration of T-Mobile USA, Inc and Petition for Arbitration of Sprint Spectrum L P D/B/A Sprint PCS*

On December 29, 2000 the Hearing Officer issued an Initial Order addressing Legal Issue No. 1 and ruling that BellSouth must keep the current toll settlement arrangements in place until they are terminated, replaced, or modified by the TRA.⁵

On January 16, 2001, BellSouth filed a Petition for Appeal asserting that the TRA does not have jurisdiction over the toll settlement arrangements and that the Authority should reject the Hearing Officer's *First Initial Order*. The Directors considered BellSouth's appeal at an Authority Conference on February 21, 2001 and voted unanimously to deny the appeal. In its *Order Denying BellSouth's Petition for Appeal and Affirming the Initial Order of Hearing Officer* issued on May 9, 2001, the Authority specifically upheld the Hearing Officer's determination of jurisdiction over the toll settlement arrangements. The Order also noted that Legal Issue No. 2 had not been addressed in the *First Initial Order*.

In an Order issued on June 28, 2002, the Hearing Officer addressed the remaining two legal issues finding that (1) withdrawal of the toll settlement agreements between BellSouth and the Rural Local Exchange Carriers ("ICOs") should be considered within Docket No. 00-00523 and (2) the State's Universal Service statute, as enacted, is intended to apply to rate of return regulated companies, as such companies are defined under state law.⁶ As a basis for this decision, the Hearing Officer stated that "the Tennessee Public Service Commission ("TPSC") [had] directed BellSouth Telecommunications, Inc. ("BellSouth") to enter into toll settlement arrangements that were structured in a manner that enable independent companies to maintain their current revenue streams."⁷ Additionally, the State's Universal Service statute does not

⁵ See *Initial Order of Hearing Officer For the Purpose of Addressing the Authority's Jurisdiction Over Intralata Toll Settlement Agreements Between BellSouth Telecommunications, Inc and Independent Incumbent Local Exchange Carriers*, p 12 (December 29, 2000) ("*First Initial Order*")

⁶ See *Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 & 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000* (June 28, 2002) ("*Second Initial Order*").

⁷ *Id.*, p 4 (June 28, 2002)

mandate price regulation. In the absence of such a mandate, Universal Service participation does not depend upon price regulation or rate-of-return regulation.

On July 15, 2002, BellSouth filed in this Docket the *First Reconsideration Motion*. A substitute version of this *Motion* was filed on July 25, 2002. Based upon the Hearing Officer's determination that withdrawal of the toll settlement agreements should be considered in Docket No. 00-00523, BellSouth asked for clarification that the *Second Initial Order* does not alter the Hearing Officer's earlier directive to the parties to continue their negotiations or the presumption that those negotiations would continue.⁸ BellSouth also sought clarification and/or reconsideration of the Hearing Officer's statement relating to the TPSC's directive to BellSouth to enter into toll settlement agreements.⁹

At the July 23, 2002 Authority Conference, the panel of Directors assigned to this Docket¹⁰ considered BellSouth's *First Reconsideration Motion*. The panel voted unanimously to treat BellSouth's motion as an appeal of the *Second Initial Order* and to consider it at a later date. The panel also voted to appoint Director Ron Jones as the Hearing Officer.¹¹

According to BellSouth, the requested clarifications/reconsiderations are necessary to motivate the ICOs to participate in negotiations because the negotiations have been stalled by the ICOs acting under the belief that the existing toll settlement arrangements will remain in place until a rural universal service fund has been established. Essentially, BellSouth sought clarification as to whether it is authorized to continue the renegotiation of its toll settlement

⁸ *BellSouth Telecommunication, Inc.'s Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of Pre-Hearing Officer filed on November 8, 2000*, p. 3 (July 25, 2002)

⁹ *Id.*, p. 4.

¹⁰ The terms of the former Directors of the Authority, Chairman Sara Kyle, and Directors H. Lynn Greer, Jr. and Melvin J. Malone, expired on June 30, 2002. Chairman Kyle was re-appointed and commenced a new term as a Director of the Authority on July 1, 2002. Deborah Taylor Tate, Pat Miller, and Ron Jones began terms as Directors on July 1, 2002. Pursuant to the requirements of the amended provisions of Tenn. Code Ann. § 65-1-204, a three member voting panel consisting of Chairman Kyle and Directors Miller and Jones was randomly selected and assigned to this Docket.

¹¹ *See Order Accepting Petition for Appeal and Appointing Hearing Officer*, p. 3 (September 17, 2002)

arrangement with the ICOs and that the current arrangements need not remain in place through the conclusion of this Docket as a substitute for a universal service fund.¹²

From the perspective of the rural ICOs, the Hearing Officer's *Second Initial Order* has not been interpreted as a signal to cease negotiations.¹³ Moreover, it is the belief of the rural ICOs that the TRA sought to encourage continued negotiations and that each company has willingly participated in this process. For this reason, the rural ICOs contend that the intent of the TRA regarding negotiation between the parties is not in need of clarification and is, therefore, moot. The rural ICOs did not take a position on the remainder of BellSouth's Motion.

Although not expressing an opinion on the precise issues presented for reconsideration, the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") did offer its position on BellSouth's underlying legal premise.¹⁴ The Consumer Advocate disagrees that the TRA is without the necessary authority to prevent BellSouth from terminating the existing toll settlement agreements. The Consumer Advocate also contends that the toll settlement agreements have been subject to the regulatory oversight of both the TRA and the TPSC. Rates for intraLATA long distance service have routinely been submitted for the Authority's approval. Because BellSouth's toll payments to the ICOs have remained relatively constant over the years, notwithstanding a reduction in its own long distance rates, the Consumer Advocate contends that the existence of regulatory oversight is a logical conclusion.

On August 23, 2002, BellSouth filed a letter requesting that the TRA hold its *First Reconsideration Motion* in abeyance for sixty days. An Order was entered by the Hearing

¹² See *BellSouth's Brief Regarding Status of Outstanding Motions and Procedural Proposal*, pp 9-11 (February 27, 2004)

¹³ *Reply Brief of Rural Independent Coalition In Opposition to the BellSouth Motion For Reconsideration or, in the Alternative, Clarification Of The Initial Order Of The Hearing Officer* (August 16, 2002).

¹⁴ *Reply Brief of the Attorney General to BellSouth's Motion for Reconsideration, or in the Alternative, Clarification of the Initial Order of Hearing Officer* (August 19, 2002).

Officer on September 4, 2002 granting BellSouth's request. In response to subsequent joint requests for extension, the Hearing Officer extended the abeyance period until May 5, 2003. On April 2, 2003 BellSouth submitted a letter stating that it would discontinue payments to Coalition members after April 2003 for Commercial Mobile Radio Service ("CMRS") traffic transiting its network.¹⁵ On April 3, 2003, the Coalition responded by filing a *Petition for Emergency Relief and Request for Standstill Order by the Tennessee Independent Coalition* ("*Petition for Emergency Relief*"). BellSouth filed its response and counterclaim on April 15, 2003.

On April 25, 2003, BellSouth and the Coalition filed the *Joint Agreed Motion for 60-Day Conditional Stay* wherein the parties agreed to engage in good faith negotiations to establish terms governing payments for the termination of CMRS traffic.¹⁶ The stay provided that BellSouth would continue compensating Coalition members for CMRS traffic for sixty (60) days after which BellSouth would pay 3.0 cents per minute for the CMRS traffic for the next 30 (thirty) days. The parties agreed that at the conclusion of this ninety-day period BellSouth could terminate payments to the Coalition but the Coalition retained the right to contest such action before the TRA.¹⁷ BellSouth and the Coalition then jointly filed a letter on May 2, 2003 requesting the Hearing Officer to continue holding BellSouth's *First Reconsideration Motion* in abeyance for an additional sixty (60) days.

On May 5, 2003, the Hearing Officer issued the *Order Granting Conditional Stay, Continuing Abeyance, and Granting Interventions*. Within this Order, the Hearing Officer held the *Petition for Emergency Relief* and *First Reconsideration Motion* in abeyance until July 4, 2003. The Order also directed BellSouth and the Coalition to send correspondence to CMRS

¹⁵ See Letter to Director Ron Jones from Guy Hicks, General Counsel for BellSouth, dated April 2, 2003, Page 1.

¹⁶ See *Joint Agreed Motion for 60-Day Conditional Stay*, Page 1.

¹⁷ *Id*

providers that have meet-point billing agreements¹⁸ with BellSouth and invite them to participate in negotiations and file reports at scheduled intervals on the status of negotiations with CMRS providers.¹⁹ Following updates reflecting the parties' continued negotiations, the Hearing Officer entered Orders on July 2, 2003, August 4, 2003, September 2, 2003 and November 3, 2003 extending the stay and time period for holding the filings in abeyance. According to the November 3, 2003 Order, the stay and abeyance was scheduled to expire on January 5, 2004, and the parties were scheduled to file an update report regarding negotiations by January 2, 2004. When no updates were filed, the Hearing Officer held a telephonic status conference on February 17, 2004. As a result of that status conference, the Hearing Officer determined that the most efficient manner for this docket to proceed was to have the parties submit briefs addressing all outstanding pleadings and issues. At the direction of the Hearing Officer, initial briefs and reply briefs were filed on February 27, 2004 and March 8, 2004, respectively.²⁰ On May 6, 2004 the Hearing Officer issued an *Order Granting in Part the Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition* ("May 6, 2004 Order"). In that Order the Hearing Officer determined:

BellSouth Telecommunications, Inc. shall pay to the Rural Independent Coalition compensation in the amount of 3.0 cents per minute for all CMRS traffic terminated after May 31, 2003 to an end user served by a member of the Rural Independent Coalition when that CMRS traffic is originated by a CMRS provider that has entered into a meet-point billing arrangement with BellSouth Telecommunications, Inc. Unless otherwise ordered, this obligation shall continue until the earliest of the following dates: (1) a date established by the CMRS Carriers and the Coalition members; (2) 30 days following the panel's deliberations in Docket No. 03-00585; or (3) December 31, 2004. BellSouth shall continue to make payments for all other traffic, including CMRS traffic

¹⁸ "Meet-Point Billing" is defined by BellSouth as "the name of billing arrangements in which a carrier receives the identifying information necessary to bill the originating carrier. CLECs and IXC's all use meet-point billing arrangements with BellSouth. ICOCs also use meet-point billing arrangements with IXC's." *BellSouth Telecommunications, Inc.'s Brief Re Hearing Officer's May 6, 2004 Order*, p. 3 (June 7, 2004)

¹⁹ See *Order Granting Conditional Stay, Continuing Abeyance, and Granting Interventions*, pp. 8-9, (May 5, 2003).

²⁰ See *Order on February 17, 2004 Telephonic Status Conference*, p. 3 (February 24, 2004)

terminated to a Rural Independent Coalition end user when that CMRS traffic is originated by a CMRS provider that has not entered into a meet-point billing arrangement with BellSouth Telecommunications, Inc. in accordance with previous orders in this docket.²¹

BellSouth's *First Reconsideration Motion* was noticed for consideration at the May 24, 2004 Authority Conference by the voting panel assigned to this docket. On May 17, 2004, the CMRS providers filed a Petition for Reconsideration as to the May 6, 2004 Order. BellSouth also filed its *Second Reconsideration Motion* on May 17, 2004.

During the May 24, 2004 Conference, the voting panel deferred action on the pending requests for reconsideration and stayed the effectiveness of the *May 6, 2004 Order*. The panel also established a briefing schedule and scheduled oral arguments on all pending reconsideration motions directed at the Hearing Officer's *May 6, 2004 Order*. BellSouth, Consumer Advocate, CMRS providers, and the Coalition all submitted briefs.

At the July 26, 2004 Authority Conference, the panel heard oral arguments from all parties concerning the reconsideration petitions filed by BellSouth and the CMRS providers in reference to the *May 6, 2004 Order*. The following parties participated in oral argument through their respective counsel:

BellSouth - **Joelle J. Phillips, Esq.**, BellSouth Telecommunications, Inc., 333 Commerce Street, Suite 2101, Nashville, TN 37201-3303

CMRS - **Clay Phillips, Esq.**, Miller & Martin, 150 4th Avenue, Suite 1200, Nashville, TN 37219; **Henry Walker, Esq.**, Boulton, Cummings, Connors & Berry, 414 Union Street, Suite 1600, P.O. Box 198062, Nashville, TN 37219-8062

Coalition - **William T. Ramsey, Esq.**, Neal & Harwell, PLC, 150 Fourth Avenue North, Suite 2000, Nashville, TN 37219-2498; **Stephen G. Kraskin, Esq.**, Kraskin, Lesse & Cosson, LLP, 2120 L Street, N.W., Suite 520, Washington, D.C. 20037

Consumer Advocate - **Shilina Chatterjee, Esq.**, Office of the Attorney General, 426 5th Avenue N., 2nd Floor, John Sevier Building, Nashville, TN 37243

²¹ *Order Granting in Part the Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition*, p 18 (May 6, 2004)

Positions of the Parties

BellSouth claims that it is the wrong party to provide compensation for CMRS traffic.²² Moreover, BellSouth contends that the Rural Universal Service docket is the wrong forum for deciding such issues.²³ Instead, BellSouth argues that the CMRS-Coalition arbitration Docket No. 03-00585, is the correct forum to resolve issues of compensation for CMRS traffic because the cost-causing parties responsible for compensation, the CMRS Providers, are parties to that proceeding.²⁴ BellSouth also asserts that the *May 6, 2004 Order* incorrectly excludes compensation to CMRS providers for traffic originating from Coalition members' networks.²⁵ According to BellSouth, the *May 6, 2004 Order* provides encouragement to the Coalition to delay resolution of the arbitration proceeding, thereby allowing its members to continue to collect compensation rates from BellSouth that are above market rates.

BellSouth also argues that the *May 6, 2004 Order* is inconsistent with the Pre-Arbitration Officer's *April 12, 2004 Order* in Docket No. 03-00585 because the *April 12, 2004 Order* found that BellSouth has no obligation to pay terminating carriers for third-party transit traffic.²⁶ BellSouth states that no party contested the *April 12, 2004 Order* in Docket No. 03-00585. BellSouth also alleges that the *May 6, 2004 Order* is inconsistent with Sections 251 and 252 of the Federal Telecommunication Act in that it requires the transit carrier BellSouth, not the originating CMRS carrier, to compensate the terminating party.²⁷

BellSouth claims that the 3.0 cents per minute rate established in the *May 6, 2004 Order* exceeds rates approved by the Authority in its approval of negotiated interconnection agreements

²² *BellSouth Telecommunications, Inc.'s Brief Re Hearing Officer's May 6, 2004 Order*, at 9-10 (June 7, 2004) ("BellSouth's Brief").

²³ *Id.*, at 8-9 (June 7, 2004). BellSouth claims that resolving CMRS related disputes in Docket No. 00-00523 is delaying consideration of establishment of a rural universal service fund – the true purpose of Docket No. 00-00523.

²⁴ BellSouth Brief, at 4-5.

²⁵ *Id.*, at 10

²⁶ *Id.*, at 10-11. BellSouth cites page 7 of the *April 12, 2004 Order* in Docket No. 03-00585.

²⁷ *Id.*, at 11

between certain Coalition members and CMRS carriers.²⁸ BellSouth also claims that 3.0 cents per minute rate exceeds other settlement rates found in the BellSouth region.²⁹ Even though BellSouth argues that it has no obligation to compensate the Coalition for CMRS traffic, it claims that the *May 6, 2004 Order* is in error because it does not allow for true-up payments to BellSouth based upon the outcome of the CMRS-Coalition arbitration in Docket No. 03-00585.³⁰

The CMRS providers argue that the *May 6, 2004 Order* is in conflict with the interim compensation provisions of 47 C.F.R. § 51.715. Specifically, the CMRS providers state that the *May 6, 2004 Order* violates § 51.715 because the rate ordered therein is not cost-based, the payments are not reciprocal (i.e. no rate is set for Coalition traffic terminated to CMRS customers), and the rates are not subject to true-up.³¹ The CMRS providers propose that an appropriate interim rate would be 1.0 cent per minute or that “bill and keep” arrangements be implemented.³² The CMRS providers argue that “at a minimum, the Order should be revised to require that the interim compensation arrangement be conformed to the results of the arbitration” i.e. there should be a true-up.³³

The Coalition argues against the reconsideration petitions and contends that BellSouth is in error when it asserts that the issue of the appropriateness of the interim rate in the *May 6 Order* is not lawfully before the agency. The Coalition asserts that the *May 6 Order* only concerns the Coalition’s Petition for enforcement of earlier Authority Orders.³⁴ Further, the Coalition notes that the existence of market rates in approved interconnection agreements that

²⁸ *Id.*, at 13

²⁹ *Id.*, at 13-15

³⁰ *Id.*, at 16-17.

³¹ CMRS Providers’ Brief (originally filed as Petition for Reconsideration), at 4-6 (June 7, 2004)

³² *Id.*, at 6-8

³³ *Id.*, at 8-9

³⁴ *Brief of the Rural Independent Coalition in Response to Motions for Reconsideration of the Hearing Officer’s Order Dated May 6, 2004*, at 12-13 (June 7, 2004) (“Coalition’s Brief”).

are lower than the interim compensation rates is not relevant to the issue of whether BellSouth must maintain its existing contractual interconnection arrangements with the Coalition.³⁵

The Coalition asserts that there is no contradiction between the *May 6, Order* and the *April 12 Order* in Docket No. 03-00585 and asserts that BellSouth is seizing on dicta in the *April 12 Order* to support its argument. According to the Coalition, no contradiction exists because Docket No. 03-00585 is addressing replacement terms and conditions for the existing BellSouth/Coalition agreements and the *May 6 Order* deals solely with enforcement of existing arrangements between BellSouth and the Coalition.

The Coalition asserts that the interim federal rules on reciprocal compensation are not applicable to the existing interconnection arrangements with BellSouth because the language of 47 C.F.R. § 51.715 excludes instances where a carrier has an existing interconnection arrangement.³⁶ The Coalition also asserts, counter to the claims of BellSouth and the CMRS providers, that the *May 6, 2004 Order* does not preclude a true-up in the event that a true-up is ordered in Docket No. 03-00585.³⁷

The Consumer Advocate argues that the status quo should be maintained between BellSouth and the Coalition until existing agreements are either “modified, replaced or terminated by the TRA” or supplanted as a result of the CMRS-Coalition arbitration in Docket No. 03-00585.³⁸ The Consumer Advocate supports the *May 6, 2004 Order* stating that the TRA properly asserted its regulatory authority in requiring BellSouth to maintain its interconnection arrangements with the Coalition.³⁹ The Consumer Advocate disputes BellSouth’s claim that the existing interconnection arrangements do not cover CMRS traffic, noting that the Authority has

³⁵ *Id.*, at 13

³⁶ *Id.*, at 17-18.

³⁷ *Id.*, at 19-20

³⁸ *Brief of the Consumer Advocate & Protection Division of the Office of the Attorney General in Response to Motion for Reconsideration of BellSouth Telecommunications, Inc. and Petition for Reconsideration of the Commercial Mobile Radio Service (“CMRS”) Carriers*, at 6 (June 7, 2004) (“Consumer Advocate’s Brief”)

³⁹ *Id.*, at 2-3.

already resolved this issue in its May 9, 2001 Order,⁴⁰ and that the TRA has issued no order to exclude CMRS traffic.⁴¹ The Consumer Advocate further claims that it is prudent to maintain the compensation to Coalition members provision of the *May 6, 2004 Order* until the issue of who is responsible for the cost of delivering CMRS traffic is resolved in Docket No. 03-00585. Finally, the Consumer Advocate claims that universal service could be endangered by relieving BellSouth of its financial obligations to the Coalition members without a new compensation agreement reached in the arbitration.⁴²

Findings and Conclusions

BellSouth's *Second Reconsideration Motion* was considered by the voting panel during the August 9, 2004 Authority Conference. A majority of the panel voted to amend the Hearing Officer's *May 6, 2004 Order* to require BellSouth to pay a 1.5 cent per minute interim rate for transit wireless tariff as opposed to the 3.0 cents per minute rate set forth in the May 6, 2004 Order.⁴³ The majority of the panel found that the 1.5 cent interim rate is just and reasonable because it reflects negotiated rates existing in approved agreements in the BellSouth region for CMRS traffic transiting BellSouth's network. Further, recognizing that the Coalition members have been providing services without compensation, the majority of the panel found that BellSouth should be required to pay the 1.5 cent rate from June 2003 when BellSouth ceased payments to the Coalition members. BellSouth shall continue such payments at the 1.5 cent rate through September 30, 2004. A majority of the voting panel also determined that there should be a true-up of the 1.5 cent interim rate for wireless transit traffic to the rate for wireless traffic determined in Docket No. 03-00585.

⁴⁰ *Order Denying BellSouth's Petition for Appeal and Affirming the Initial Order of Hearing Officer* (May 9, 2001)

⁴¹ Consumer Advocate's Brief, at 3

⁴² *Id.*, at 5-6.

⁴³ Director Jones put forth a motion on BellSouth's motions which did not receive a second. Director Jones did not vote with the majority on either of BellSouth's motions.

With respect to all other traffic exchanged between BellSouth and the Coalition, the majority of the panel also granted, in part, BellSouth's *First Reconsideration Motion*. The majority of the panel voted to bring to an end as of September 30, 2004, the injunctive relief granted in ordering paragraph number 1 of the *First Initial Order* issued on December 29, 2000. The majority of the panel found that negotiations regarding the toll settlement agreements can take place outside of this docket provided that an interim compensation scheme exists. The compensation currently in place must remain in place until replaced by an interim rate negotiated between BellSouth and Coalition members. This decision specifically relates to the remaining traffic, exclusive of wireless transit traffic, exchanged between BellSouth and Coalition members under the existing toll settlement agreements and requires BellSouth, in the interim, to continue payments to Coalition members for remaining traffic exchanged in accordance with the rates, terms and conditions contained in existing toll settlement arrangements.

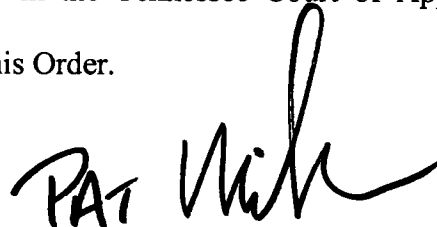
IT IS THEREFORE ORDERED THAT:

1. The injunctive relief set forth in the *First Initial Order* issued on December 29, 2000, shall come to an end on September 30, 2004.
2. BellSouth's *First Reconsideration Motion* is granted, in part, to allow negotiations regarding the toll settlement agreements to take place outside of this docket, provided that an interim compensation scheme exists. The compensation currently in place must remain in place until replaced by an interim rate negotiated between BellSouth and Coalition members. For the remaining traffic, exclusive of wireless transit traffic, exchanged between BellSouth and Coalition members under the existing toll settlement agreements, BellSouth is required in the interim to continue payments to Coalition members for remaining traffic exchanged in accordance with the rates, terms and conditions contained in existing toll settlement arrangements.

3. BellSouth's *Second Reconsideration Motion* is granted, in part, and the Hearing Officer's *May 6, 2004 Order* is amended by requiring BellSouth to pay a 1.5 cent per minute interim rate for transit wireless traffic. BellSouth shall recompense the Coalition members at the 1.5 cent rate back to June 2003 when BellSouth ceased payments and shall continue such payments at the 1.5 cent rate through September 30, 2004. This interim rate, however, shall be subject to true-up to the rate for wireless traffic established by the Authority in Docket No. 03-00585.

4. Inasmuch as the motions for reconsideration were deemed appeals to the Authority of Hearing Officer orders, any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order.

5. Any party aggrieved by the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.



Pat Miller, Chairman



Sara Kyle, Director

Ron Jones, Director